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IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF CALIFORNIA

SIERRA CLUB, et al., Plaintiffs, v. ROGERS C. B. MORTON, et al., Defendants.	CIVIL NO. 51464 WTS
COUNTY OF TULARE, Applicant in Intervention.	

PLAINTIFF'S REPLY
TO TULARE COUNTY'S SUPPLEMENTAL MEMORANDUM
IN SUPPORT OF MOTION TO INTERVENE

In its supplemental memorandum, Tulare County asserts that plaintiff Sierra Club challenges their "standing". This is not so. "Standing" involves who may sue, not who may intrude by intervention into others' lawsuits. Intervention is governed by Rule 24 of the Federal Rule of Civil Procedure. It is plaintiffs' position that Tulare County simply has not complied with the requirements of Rule 24.

At oral argument plaintiff for the Sierra Club demonstrated that the moving papers of Tulare County were deficient in four particulars. The supplemental memorandum

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has not repaired these deficiencies, which are as follows:

1) Tulare County failed to demonstrate in its moving papers that it has any interest in Mineral King of greater importance than the size of its tax base. Furthermore, Tulare County failed to cite one case in which a governmental unit was allowed to intervene in anothers' civil case because of the effect of the case on taxes or the tax base.

2) Tulare County failed to demonstrate that its interest was not adequately represented by the present defendants. More specifically, it failed to show (a) collusion between the parties, (b) adversity of interest (as opposed to mere difference), or (c) the failure of the defendants to present their case. All Tulare County suggested was a belated quarrel with the decision of the defendants to appeal the preliminary injunction. This tactical move can in no way be considered inadequate representation.

3) Tulare County failed to explain its untimely application.

4) Tulare County failed to suggest anything it could do to assist the court in this case that would not be simply duplication. Tulare County will only add to the burden of the Court and that of the citizen plaintiffs who cannot afford to litigate in big firm style.

Tulare County cites the case of Trbovich v. United Mine Workers, 404 U.S. 528, 30 L.Ed. 2d 686 (1972) for the proposition that it only need show it may be inadequately represented, rather than that it in fact has been. Plaintiffs do not quarrel with this proposition. However, Tulare County must base its argument on something other than a difference of lawyers' tactics. In Trbovich unhappy union members first initiated proceedings with the Secretary of Labor and then sought with their own attorney to pursue their quarrel with

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their union in Court. The fact that the Secretary of Labor also had responsibilities permitting suit was insufficient grounds for denying those members the right to intervene in what, in reality, was their own lawsuit. In this case Walt Disney Productions, Inc. may possibly stand in a position somewhat analogous to the Union members in Trbovich. Tulare County, however, clearly does not stand in such an analogous position. Its interest is at best secondary and remote.

Tulare County also cites the case of Neusse v. Camp, 385 F.2d 694 (D.C. Cir., 1967) for the proposition that a state official has an interest "in the validity of what his Federal counterpart has done in an area of overlapping fact and intertwined law". However, a mere glance at the facts in that case reveals that it is not a precedent for this case. Neusse involved a suit by a bank against the Comptroller of the Currency over branch banking privileges the Comprtoller planned to extend to a competitor. The rights of the banks under Federal law depended on the State Banking Code. The State Banking Commissioner sought intervention to protect the interests of State banks who were governed by his interpretation of State law, which was stricter than the Comptroller's.

It is clear that this case has no resemblance at all to Neusse. Instead, the intervenor is no more than a municipality seeking to intervene by virtue of its status as parens patriae to promote the general welfare of its citizens. As the Court noted in Neusse at 339 F.2d p. 699, Federal Courts have frequently held this type of concern does not give rise to a litigable interest in anothers' lawsuit. See e.g. Commonwealth Edison Co. v. Allis Chalmers Mfg. Co., 315 F.2d. 564, 566 (7th Cir., 1963), Gross v. Missouri & A.Ry., 74 F.Supp.

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242, 248-249 (W.D. Ark., 1947).

Respectfully submitted,

Dated: October 26, 1972

James Moorman

JAMES MOORMAN
Attorney for the Plaintiffs

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CERTIFICATE OF SERVICE BY MAIL

The undersigned certifies that he is an active member of the State Bar of California; that he is not a party to the within cause; that his business address is 311 California Street, Suite 311, San Francisco, California 94104; that he caused an envelope to be addressed to each of the following named persons; that he enclosed and sealed in each envelope a copy of the foregoing and attached document; and deposited each envelope with postage fully prepaid in the United States mail at San Francisco, California, on October 26, 1972.

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